

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 05-1619 JB

JOSE ANTONIO COS,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendant's Motion for Release Pending Appeal by the Government, filed July 25, 2006 (Doc. 74). The Court held a hearing on this motion on August 11, 2006. The primary issue is whether the Court should reconsider its Memorandum Opinion and Order, filed May 5, 2006 (Doc. 54), denying Defendant Jose Antonio Cos' Motion to Reconsider Condition of Release. For the reasons stated at the hearing, and consistent with these reasons, the Court will deny the motion.

After the Court granted Cos' motion to suppress, but before it ruled on the United States' motion to reconsider, the Court entertained a motion requesting Cos' release from custody and ruled that Cos should remain in custody. See 18 U.S.C. §3142(g). The Court does not believe that there has been sufficient change in the circumstances to warrant the release of Cos at this juncture. Although the Court is less concerned today about his use of aliases and immigration status, he remains a danger to the community and a flight risk for substantially the same reasons that the Court set forth in its May 5, 2006 Memorandum Opinion and Order.

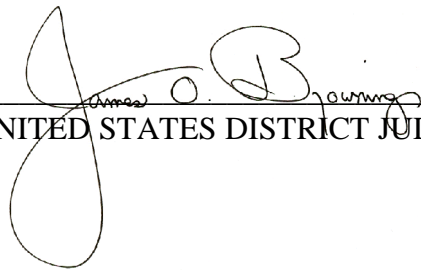
This case arises out of an arrest warrant for Kidnaping, Aggravated Assault, and Aggravated

Assault with a Deadly Weapon. The allegations are that, in an apparent jealous rage, Cos attempted to stab his ex-girlfriend and a male individual, and the two victims took cover inside a parked vehicle. Cos' two prior drug convictions, at least one of which involves trafficking, also continue to concern the Court, especially in light of Cos' possession of a loaded firearm. The picture that the Court has of Cos, given the evidence in the record, is that he engages in drug trafficking activities. Cos' conduct reveals an individual who has refused to reform his criminal ways.

In addition, on August 10, 2006, the United States filed a Supplement to its Response to Defendant's Motion for Release Pending Appeal (Doc. 77). The United States represents that state authorities have advised it this week that the district attorney will be going to a grand jury to secure new charges against Cos for a criminal sexual contact with a minor. This development may be further evidence of the danger factor that Cos poses. Further, the United States has confirmed that Cos' arrest warrant for Kidnaping, Aggravated Assault, and Aggravated Assault with a Deadly Weapon remains active in NCIC.

While Cos protests the United States' late filing of its Supplement, the Court would deny Cos' motion even without the new evidence. On the other hand, the Court should not ignore relevant evidence, even if it is presented at the last minute. In sum, the Court continues to believe that there are no conditions, or combination of conditions, that will reasonably assure Cos' appearance as required or the community's safety.

IT IS ORDERED that the Defendant's Motion for Release Pending Appeal by the Government is denied.



UNITED STATES DISTRICT JUDGE

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